

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David Theiler

Application No.: 10/689,610

Confirmation No.: 4815

Filed: October 22, 2003

Art Unit: 3623

For: METHOD AND APPARATUS FOR
MANAGING WORK FLOW

Examiner: J. G. Sterrett

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with the USPTO Official Gazette Notice entitled "Pre-Appeal Brief Conference Pilot Program" published on July 12, 2005, this brief is filed within one month from the mailing date of the Notice of Panel Decision from Pre-Appeal Brief Review mailed January 9, 2008, and is in furtherance of the Notice of Appeal filed by Appellant on November 30, 2007.

The fees required under § 41.20(b)(2) are dealt with in the accompanying
TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205.2:

I.	Real Party In Interest
II	Related Appeals and Interferences
III.	Status of Claims
IV.	Status of Amendments
V.	Summary of Claimed Subject Matter
VI.	Grounds of Rejection to be Reviewed on Appeal
VII.	Argument
VIII.	Conclusion
Appendix A.	Claims Appendix
Appendix B.	Evidence Appendix (none)
Appendix C.	Related Proceedings Appendix (none)

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is: David Theiler.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 21 claims pending in application. The application contains claims 1-20 and 22, which were finally rejected. This is an appeal from the final rejection of claims 1-20 and 22.

B. Current Status of Claims

1. Claims canceled: 21.
2. Claims withdrawn from consideration but not canceled: None.
3. Claims pending: 1-20 and 22.
4. Claims allowed: None.
5. Claims rejected: 1-20 and 22.

C. Claims On Appeal

The claims on appeal are claims 1-20 and 22.

IV. STATUS OF AMENDMENTS

There has been no amendment subsequent to the August 31, 2007 Final Rejection. A Notice of Appeal was filed on November 30, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is directed to “a development environment for creating software based workflow process management tools.” Specification, paragraph [0002].

“[A] workflow process management system may be considered to be a system which utilizes a set of procedural rules to manage how work is performed by participants.” Specification, paragraph [0003]. “[W]ork can ... be classified into four categories, namely fixed activities, variable activities, periodic, and offline activities. Fixed activity relates to work which is not volume sensitive and which needs to be performed daily. Variable activities are daily activities which is volume sensitive. Periodic activities relates to non-daily activities, whether volume sensitive or not. Offline activities denotes

any special activities such as training, special projects, or meetings. Each type of work (including time allocated for meals or breaks) can be converted into an equivalent amount of time. When expressed in hours, this time is known as earned hours. A department, which by definition is an entity which exists for performing a set of core functions, maximizes its production when it maximizes its earned hours.” Specification, paragraph [0005].

Accordingly, independent claim 1 recites a “method for creating a workflow process management application suitable for an organization (paragraph [0023]), comprising: (a) creating, on a computer system, a plurality of department objects, each of said department objects being associated with a respective department of said organization (paragraphs [0031], [0043], and [0120]); (b) creating, on said computer system, a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization (paragraphs [0031], [0083], [0091], and [0120]); (c) creating, on said computer system, a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization (paragraphs [0031] and [0120]); and (d) after steps (a), (b), and (c), and responsive to a command, automatically generating, by said computer system, said workflow process management application from said department objects, resource objects, and activity objects (paragraph [0115]); wherein said workflow process management application, when executed by said computer, permits a user to: enter, for each department, a workflow plan for said department (paragraph [0120]), generate worker assignments (paragraph [0115]), receive a workflow performed by departments of said organization (paragraph [0120]), and create a report comparing said workflow plan with said workflow performed (paragraph [0120]); said workflow process

management application using said report to automatically generate subsequent worker assignments without further interaction with the user (paragraph [0115]); wherein said workflow plan comprises a plurality of standards, each one of said standards inter-relating at least one activity object with at least one resource object as a function of time and skill level (paragraph [0110]).”

Independent claim 8 recites a “computer readable medium (paragraph [0026]), comprising: a web based application comprising a plurality of web pages and a plurality of database tables, said web based application being executable by a computer (paragraphs [0027]-[0029]); wherein the computer, when executing the application, permits a user to: (a) create, a plurality of department objects, each respectively associated with a department (paragraphs [0031], [0043], and [0120]); (b) for each of said plurality of department objects, create a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization using a skill matrix (paragraphs [0031], [0083], [0091], and [0120]), create a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization (paragraphs [0031] and [0120]), and (c) after steps (a) and (b), and responsive to a command by said user, cause said computer to automatically generate a workflow process management application from said department objects, resource objects, and activity objects (paragraph [0115]); wherein said workflow process management application permits said user to enter, for each department, a workflow plan for said department (paragraph [0120]), receive a workflow performed by departments of said organization (paragraph [0120]), and create a report comparing said workflow plan with said workflow performed (paragraph [0120]), said workflow plan comprises a plurality of standards, each one of said standards inter-relating

at least one activity object with at least one resource object as a function of time and skill level (paragraph [0110]), and said workflow process management application defines acuties, each acuity including a set of activities that require a minimum skill level and/or licensure, and uses said acuties to determine worker assignments (paragraphs [0069], [0109], and [0115]), and said workflow process management application uses said report to automatically generate subsequent worker assignments without further interaction with the user (paragraph [0115]).”

Independent claim 12 recites an “apparatus for creating a workflow process management application for an organization (paragraph [0025]), comprising: a computer system, including a processor for executing code and a mass storage device (paragraphs [0025] and [0029]); and an application for execution on said computer system (paragraph [0025]); wherein the computer system, when executing said application, permits a user to: (a) create a plurality of department objects, each respectively associated with a department (paragraphs [0031], [0043], and [0120]); (b) for each of said plurality of department objects, create a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization (paragraphs [0031], [0083], [0091], and [0120]); create a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization (paragraphs [0031] and [0120]); and (c) after steps (a) and (b), and responsive to a command by said user, cause said computer system to generate a workflow process management application from said department objects, resource objects, and activity objects (paragraph [0115]), wherein said workflow process management application permits a user to enter, for each department, a workflow plan for said department (paragraph [0120]), generate worker assignments (paragraph [0115]),

create a first report corresponding to planned workflow and expected needs (paragraph [0120]), receive a workflow performed by said organization (paragraph [0120]), and create a second report comparing said workflow plan with said workflow performed to automatically determine workflow productivity (paragraphs [0115] and [0120]), said workflow process management application uses said second report to automatically generate subsequent worker assignments without further interaction with the user (paragraph [0115]), said workflow plan comprises a plurality of standards, each one of said standards inter-relating at least one activity object with at least one resource object as a function of time (paragraph [0110]), and said workflow process management application defines acuities, each acuity including a set of activities that require a minimum skill level and/or licensure (paragraphs [0069], [0109], and [0115]).”

Independent claim 22 recites a “computer implemented method of performing a workflow process management application for an organization (paragraphs [0026] and [0120]), said method comprising: entering a user input workflow plan for a department, each department being associated with at least one department object, each department object being associated with at least one resource object, each resource object being further associated with a production resource of the organization, each department object also being associated with at least one activity object that is associated with an activity of the organization (paragraphs [0031], [0043], [0083], [0091], and [0120]); generating worker assignments (paragraph [0115]); creating a first report corresponding to planned workflow and expected needs (paragraph [0120]); inputting an indication of workflow performed (paragraph [0120]); creating a second report comparing the entered workflow plan with the input workflow performed (paragraphs [0115] and [0120]); and automatically

generating subsequent worker assignments without further interaction with the user based on information in the second report (paragraph [0115]).”

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-20 and 22 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,035,809 to Miller et al. (hereinafter “Miller”) in view of User’s Guide for Microsoft Project (hereinafter “MSProject”).

VII. ARGUMENT

A. Claims 1-20 and 22 would not have been obvious under 35 U.S.C. § 103(a) from the combined disclosures of Miller and MSProject.

Claim 1 recites a method for creating a workflow process management application, “wherein said workflow process management application, when executed by said computer, permits a user to: ... generate worker assignments ...; said workflow process management application using said report to automatically generate subsequent worker assignments without further interaction with the user” (emphasis added). Claims 8, 12, and 22 recite similar limitations. Appellant respectfully submits that Miller and MSProject, even when combined, do not teach or suggest these limitations.

To the contrary, MSProject teaches, with regard to the leveling operation, that “leveling simply delays certain tasks in your schedule until the resources assigned to them are no longer overallocated.” Page 65, ln. 24-25 (emphasis added), see also page 69, ln. 6-7. MSProject also teaches that “it can’t substitute a resource on an overallocated task or change the task’s duration.” Page 69, ln. 15-16. Therefore, MSProject is capable only of pushing back in time existing tasks, not generating new subsequent tasks.

MSProject further teaches that “Microsoft Project cannot take into account all of the subtle things you know about your project. So you should always review the leveling changes made by Microsoft Project to make sure that the solution is what you want.” Page 65, ln. 25-28 (emphasis added), see also page 69, ln. 14-15, 18-20. Thus, MSProject requires further user interaction, which is in direct contrast to the claimed invention.

Accordingly, Appellant respectfully submits that MSProject does not disclose, teach, or suggest automatically generating subsequent worker assignments without further interaction with the user, as recited in claims 1, 8, 12, and 22.

Nor is Miller cited for these limitations. In fact, the Final Rejection at page 5 admits that Miller does not disclose, teach or suggest these limitations. Thus, Miller does not remedy the deficiencies of MSProject.

Claim 8 further recites “for each of said plurality of department objects, creat[ing] a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization using a skill matrix” and “said workflow process management application defines acuties, each acuity including a set of activities that require a minimum skill level and/or licensure, and uses said acuties to determine worker assignments” (emphasis added). Claim 12 further recites “said workflow process management application defines acuties, each acuity including a set of activities that require a minimum skill level and/or licensure.” Neither Miller nor MSProject is cited for these limitations. Therefore the Final Rejection fails to make a *prima facie* case of obviousness for claims 8 and 12.

Moreover, the Supreme Court recently said in *KSR Int'l Co. v. Teleflex Inc.* that “the [Graham] factors continue to define the inquiry that controls” a finding of obviousness and reiterated that a “patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” 127 S. Ct. 1727, 1734 (U.S. 2007). The Graham factors include determining the scope and content of the prior art, ascertaining differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art. *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

Appellant submits that the Final Rejection has not properly shown that the Appellant’s claims would have been obvious by conducting an examination of the Graham factors. “Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case.” M.P.E.P. § 2141. Instead, to show that Miller and MSProject may be combined and that the Appellant’s claims are obvious in light of these references, the Final Rejection merely states that it would be obvious to combine the MSProject with the Miller “as doing so provides a more efficient means of tracking and correcting workflow progress ... since feedback from the user is not waited for in order to generate corrections.” Final Rejection at p. 6. This statement is not an adequate substitution for an analysis of the Graham factors and does not show obviousness.

In fact, MSProject clearly states that “you should always review the leveling changes made by Microsoft Project to make sure that the solution is what you want.” Page 65, ln. 25-28 (emphasis added). Therefore, MSProject waits for user input, which directly contradicts the purported reason for combining the references.

Since Miller and MSProject do not teach or suggest all of the limitations of claims 1, 8, 12, and 22, claims 1, 8, 12, and 22 are not obvious over the Miller and MSProject combination. Claims 2-7, 8-11, and 13-20 depend, respectively, from independent claims 1, 8, and 12, and are patentable at least for the reasons mentioned above, and on their own merits.

For example, claim 5 additionally recites that “said group of templates includes a template associated with hospital management and said plurality of department, resource, and activity objects associated with said template are respectively associated with departments, resources, and activities of a hospital.” Appellant respectfully submits that Miller, which has been cited for teaching this limitation, does not teach the recited limitation. Rather, Miller teaches only “methodologies, process flows, tools, and templates to create and maintain a Software Engineering Process Group (SEPG).” Col. 5, ln. 9-11. As admitted in the Final Rejection (p. 7), Miller “does not expressly disclose this limitation.” The required “departments, resources, and activities of a hospital” are very different from those found in a software development environment, so one skilled in the art of managing a hospital would not look to a Miller, which is directed toward managing a software development environment.

Claim 15 additionally recites “displaying a page in a user interface, said page comprising: a logo region; a menu region, including at least one menu item; a navigation region; and a context sensitive area” (emphasis added). MSProject, which is cited for teaching this limitation, does not show any region where a logo may be entered. Rather, only various tables are shown on pages 113-119 and the last page. Claims 16-20 are dependent on claim 15, and are patentable at least for the reasons mentioned above, and on their own merits


Appellant respectfully requests that the 35 U.S.C. § 103(a) rejection of claims 1-20 and 22 be reversed.

VIII. CONCLUSION

For each of the foregoing reasons, Appellant respectfully submit that the claimed invention is not indefinite, and is novel and non-obvious over the cited prior art. Reversal of each of the final grounds of rejection is respectfully solicited.

Dated: January 23, 2008

Respectfully submitted,

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APPENDIX A – CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/689,610

1. (Previously Presented) A method for creating a workflow process management application suitable for an organization, comprising:

(a) creating, on a computer system, a plurality of department objects, each of said department objects being associated with a respective department of said organization;

(b) creating, on said computer system, a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization;

(c) creating, on said computer system, a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization; and

(d) after steps (a), (b), and (c), and responsive to a command, automatically generating, by said computer system, said workflow process management application from said department objects, resource objects, and activity objects;

wherein said workflow process management application, when executed by said computer, permits a user to:

enter, for each department, a workflow plan for said department,

generate worker assignments,

receive a workflow performed by departments of said organization,
and

create a report comparing said workflow plan with said workflow
performed;

said workflow process management application using said report to
automatically generate subsequent worker assignments without further interaction
with the user;

wherein said workflow plan comprises a plurality of standards, each one of
said standards inter-relating at least one activity object with at least one resource
object as a function of time and skill level.

2. (Previously Presented) The method of claim 1, wherein in said workflow process
management application, said user enters a workflow plan by creating relationships
between said resource and activity objects for each department.

3. (Previously Presented) The method of claim 1, wherein said plurality of activity
objects comprise a plurality of fixed activity objects and variable activity objects.

4. (Previously Presented) The method of claim 1, further comprising:

selecting from a group of templates, a selected template; and

after said selecting, automatically creating a plurality of department, resource, and activity objects associated with said selected template.

5. (Previously Presented) The method of claim 4, wherein said group of templates includes a template associated with hospital management and said plurality of department, resource, and activity objects associated with said template are respectively associated with departments, resources, and activities of a hospital.

6. (Previously Presented) The method of claim 1, further comprising:

creating, on said computer system, a plurality of objects related to groups, locations, and acuities;

wherein said set of objects further comprises said plurality of objects related to groups, locations, and acuities.

7. (Previously Presented) The method of claim 6, wherein in said workflow process management application, said user enters a workflow plan by creating relationships between said resource objects, activity objects, and objects related to groups, locations, and acuities.

8. (Previously Presented) A computer readable medium, comprising:

a web based application comprising a plurality of web pages and a plurality of database tables, said web based application being executable by a computer;

wherein the computer, when executing the application, permits a user to:

(a) create, a plurality of department objects, each respectively associated with a department;

(b) for each of said plurality of department objects,

create a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization using a skill matrix,

create a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization, and

(c) after steps (a) and (b), and responsive to a command by said user, cause said computer to automatically generate a workflow process management application from said department objects, resource objects, and activity objects;

wherein

said workflow process management application permits said user to enter, for each department, a workflow plan for said department, receive a

workflow performed by departments of said organization, and create a report comparing said workflow plan with said workflow performed,

said workflow plan comprises a plurality of standards, each one of said standards inter-relating at least one activity object with at least one resource object as a function of time and skill level, and

said workflow process management application defines acuities, each acuity including a set of activities that require a minimum skill level and/or licensure, and uses said acuities to determine worker assignments, and said workflow process management application uses said report to automatically generate subsequent worker assignments without further interaction with the user.

9. (Previously Presented) The computer readable medium of claim 8, wherein in said workflow process management application, said user enters a workflow plan by creating relationships between said resource and activity objects for each department.

10. (Previously Presented) The computer readable medium of claim 8, wherein said application further permits said user to create a plurality of objects related to groups, locations, and acuities, and said set of objects further comprises said plurality of objects related to groups, locations, and acuities.

11. (Previously Presented) The computer readable medium of claim 8, wherein in said workflow process management application, said user enters a workflow plan by creating relationships between said resource objects, activity objects, and objects relating to groups, locations, and acuties.

12. (Previously Presented) An apparatus for creating a workflow process management application for an organization, comprising:

a computer system, including a processor for executing code and a mass storage device; and

an application for execution on said computer system;

wherein the computer system, when executing said application, permits a user to:

(a) create a plurality of department objects, each respectively associated with a department;

(b) for each of said plurality of department objects,

create a plurality of resource objects, each resource object being associated with at least one of said department objects and a production resource of said organization;

create a plurality of activity objects, each activity object being associated with at least one of said department objects and an activity of said organization; and

(c) after steps (a) and (b), and responsive to a command by said user, cause said computer system to generate a workflow process management application from said department objects, resource objects, and activity objects,

wherein

said workflow process management application permits a user to enter, for each department, a workflow plan for said department, generate worker assignments, create a first report corresponding to planned workflow and expected needs, receive a workflow performed by said organization, and create a second report comparing said workflow plan with said workflow performed to automatically determine workflow productivity, said workflow process management application uses said second report to automatically generate subsequent worker assignments without further interaction with the user,

said workflow plan comprises a plurality of standards, each one of said standards inter-relating at least one activity object with at least one resource object as a function of time, and

said workflow process management application defines acuities, each acuity including a set of activities that require a minimum skill level and/or licensure.

13. (Previously Presented) The apparatus of claim 12, wherein in said workflow process management application, said user enters a workflow plan by creating relationships between said resource and activity objects for each department.

14. (Previously Presented) The apparatus of claim 12, wherein said plurality of activity objects comprise a plurality of fixed activity objects and variable activity objects.

15. (Original) The method of claim 1, further comprising:

displaying a page in a user interface, said page comprising:

a logo region;

a menu region, including at least one menu item;

a navigation region; and

a context sensitive area.

16. (Original) The method of claim 15, wherein the objects created in said creating step are based on user events generated by a user interacting with said menu region, navigation region, and context sensitive area.

17. (Original) The method of claim 15, wherein said context sensitive area includes a hierarchical control object for showing and hiding a list of hierarchical objects.

18. (Original) The method of claim 17, wherein said hierarchical objects comprise at least one department of said organization.

19. (Previously Presented) The method of claim 17, wherein

said application further permits said user to create a plurality of objects related to groups, locations, and acuties,

said set of objects further comprises said plurality of objects related to groups, locations, and acuties, and

said hierarchical objects comprise at least one location of said organization.

20. (Original) The method of claim 15, wherein said menu region comprise at least one of a menu item and a sub-menu.

21. (Canceled)

22. (Previously Presented) A computer implemented method of performing a workflow process management application for an organization, said method comprising:

entering a user input workflow plan for a department, each department being associated with at least one department object, each department object being associated with at least one resource object, each resource object being further associated with a production resource of the organization, each department object also being associated with at least one activity object that is associated with an activity of the organization;

generating worker assignments;

creating a first report corresponding to planned workflow and expected needs;

inputting an indication of workflow performed;

creating a second report comparing the entered workflow plan with the input workflow performed; and

automatically generating subsequent worker assignments without further interaction with the user based on information in the second report.

APPENDIX B – EVIDENCE APPENDIX

NONE

APPENDIX C – RELATED PROCEEDINGS APPENDIX

NONE